UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,644	03/20/2002	Claus Hillermeier	32860/000282/US	7432

30596   7590   03/28/2008
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EXAMINER
GUILL, RUSSELL L

ART UNIT	PAPER NUMBER
2123	

MAIL DATE	DELIVERY MODE
03/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>26 February 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☒ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: <u>See Continuation Sheet</u>. (See 37 CFR 1.116 and 41.33(a))

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Paul L Rodriguez/
Supervisory Patent Examiner, Art Unit 2123

Continuation of 3. NOTE:

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The Applicant asserts that no new issues requiring further consideration and/or search have been raised, and Applicants have only amended the claims taking into account the Examiner's comments and to further clarify features previously set forth. While the Examiner appreciates the Applicant's assertions, the Examiner respectfully disagrees, as follows. The independent claims appear to have been amended to remove the limitation that setting constants remain static during optimization. This feature appears to be an essential distinguishing element of the Applicant's invention that distinguishes the Applicant's invention from the prior art, and removing the limitation broadens the scope of the claim, which needs further consideration and/or search. Further, the independent claims appear to have been amended to optimize a function instead of optimizing a set of parameters. This amendment appears to be a significant difference because optimizing a function is different than optimizing parameters, which again changes the scope of the claims. Finally, the Applicant's assertion does not appear to be supported with explanation and facts to support the assertion. Accordingly, the amendments to the claims appear to change the scope of the claims, and require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding the arguments addressed to the rejections under 35 USC 112, first paragraph:
In the previous Office action dated November 26, 2007, in the Response to Remarks, specific steps are discussed that are not supported by the specification. While the Examiner appreciates the Applicant's arguments, the Examiner respectfully disagrees. While the specification may recite each of the steps in a method, enablement also requires that the steps be assembled into an order that teaches performing the steps in a sequence to achieve a result. A list of disconnected steps does not appear to constitute a proper teaching

Regarding the rejections under 35 USC 103, Croix appears to teach that the corresponding output load is a parameter because it is a required input to determine a cell's operation. For example, see figure 7. Thus, a plurality of parameters appears to be taught.
Further, in Croix, column 10, lines 8 - 10, appears to teach four characterization points, which is a plurality of parameters.
Further, at a bare minimum, page 1-10 of the PSpice Optimizer, in section PSpice Optimizer, teaches that a PSpice Optimizer expression is calculated using parameter values (i.e., results), constants and operators. The calculation of a PSpice optimizer expression appears to satisfy the limitation of simulation using a result and setting constants.
Regarding the external source being an experiment, the argument does not appear to address the recited reference and explanation provided in paragraph 10.2.24 of the Office actiondated November 26, 2007. Please refer to the Office action for support of the rejection..